

MINUTES
REGULAR MEETING OF THE OWOSSO ZONING BOARD OF APPEALS
CITY OF OWOSSO
MAY 21, 2019 AT 9:30 A.M.
CITY COUNCIL CHAMBERS

CALL TO ORDER: The meeting was called to order by Chairman Randy Horton at 9:30 a.m.

ROLL CALL: Was taken by Tanya Buckelew.

MEMBERS PRESENT: Chairman Randy Horton, Board Members Michael Bruff, Matthew Grubb and Tom Taylor

MEMBERS ABSENT: Vice-Chairman Christopher Eveleth, Board Member Kent Telesz and Alternate Robert Teich

OTHERS PRESENT: Justin Sprague, CIB Planning, Craig Hoppen, Owner/President J&H Oil

AGENDA:

IT WAS MOVED BY BOARD MEMBER BRUFF AND SUPPORTED BY BOARD MEMBER TAYLOR TO APPROVE THE AGENDA FOR THE MAY 21, 2019 REGULAR MEETING AS PRESENTED.

YEAS: ALL. MOTION CARRIED.

MINUTES:

IT WAS MOVED BY BOARD MEMBER GRUBB AND SUPPORTED BY BOARD MEMBER BRUFF TO APPROVE THE MINUTES OF OCTOBER 16, 2018 AS PRESENTED.

YEAS: ALL. MOTION CARRIED.

OLD BUSINESS: - None

NEW BUSINESS/PUBLIC HEARINGS:

APPLICANT:	THE HOP FAMILY, LLC (J & H FAMILY STORES)
LOCATION OF APPEAL:	917 E MAIN ST, Owosso, MI 48867
PARCEL NUMBER:	050-112-000-034-00
PROPERTY ZONING:	B-4 GENERAL BUSINESS DISTRICT
CASE #:	P2019-003

THE APPLICANT IS PROPOSING TO DEMOLISH THE EXISTING C-STORE BUILDING AND OLD HOUSE TO CONSTRUCT A NEW CONVENIENCE STORE AND GAS STATION. THE APPLICANT HAS REQUESTED VARIANCES TO THE ZONING ORDINANCE.

VARIANCE REQUEST #1:

SECTION 38-397 COMMERCIAL DESIGN REQUIREMENTS PARAGRAPH (A) (3) WINDOW AREA OR SPANDREL GLASS SHALL MAKE UP AT LEAST TWENTY PERCENT (20%) OR MORE OF THE EXTERIOR WALL AREA FACING A PRINCIPAL STREET(S).

THE PROPOSED BUILDING MEETS THIS REQUIREMENT ON THE SOUTH ELEVATION FACING MAIN STREET. THE APPLICANT IS SEEKING A VARIANCE FOR THE EAST BUILDING ELEVATION FACING GOULD STREET AND PROPOSING APPROXIMATELY 9% GLASS AREA.

VARIANCE REQUEST #2:

SECTION 38-397 COMMERCIAL DESIGN REQUIREMENTS PARAGRAPH (A) (4) A PORTION OF THE ON-SITE LANDSCAPING SHALL ABUT THE WALLS SO THAT THE VEGETATION COMBINED WITH THE ARCHITECTURAL FEATURES SIGNIFICANTLY REDUCE THE VISUAL IMPACT OF THE BUILDING MASS AS VIEWED FROM THE STREET. *THE APPLICANT IS PROPOSING DECORATIVE STAMPED CONCRETE IN-LIEU OF FOUNDATION LANDSCAPING, AND REQUESTS A VARIANCE.*

Approved *minutes 05-21-2019*

Craig Hoppen, Owner/President of J&H Oil Co. was present to discuss the plans for the new building. J&H bought the property about 2 years ago. The proposal is to remove the existing store and house to accommodate for a new convenience store and gas station. The Pacific Pride commercial station would remain and add a new canopy and gas pumps in the front facing Main Street.

Richard Burlingame, Attorney, 831 E. Main Street, asked about the commercial pumps and viewed the site plan.

Louise Hubbard, 919 E Exchange Street, had called the building department asking about her view and she was told that she was welcome to stop in and view the pictures, etc. She also expressed concern over the mailboxes and would they be moved. This information was relayed to Mr. Hoppen, who would let his contractor be aware of the potential of needing to move the boxes.

VARIANCE REQUEST #2: (out of order so the owner had time to contact the architect)

SECTION 38-397 COMMERCIAL DESIGN REQUIREMENTS PARAGRAPH (A) (4) A PORTION OF THE ON-SITE LANDSCAPING SHALL ABOUT THE WALLS SO THAT THE VEGETATION COMBINED WITH THE ARCHITECTURAL FEATURES SIGNIFICANTLY REDUCE THE VISUAL IMPACT OF THE BUILDING MASS AS VIEWED FROM THE STREET. *THE APPLICANT IS PROPOSING DECORATIVE STAMPED CONCRETE IN-LIEU OF FOUNDATION LANDSCAPING, AND REQUESTS A VARIANCE.*

FINDINGS OF FACT AND CONCLUSIONS

Upon motion of Board Member Grubb, seconded by Board Member Bruff, the following findings, conclusions, decisions, and conditions were adopted by the Board as its decision on the above variance. The applicant does meet the applicable nine (9) facts of findings:

a. *Basic Conditions 1-9 in order for the variance to be granted.*

Factor 1: (Section 38-504(3) a.1.) "Will not be contrary to the public interest or to the intent and purpose of this chapter."

The intent of this chapter is to ensure the use of high-quality materials, provide an open and inviting look for customers. Utilizing decorative concrete will not be contrary to the intent of the ordinance.

Factor 2: (Section 38-504(3) a.2.) "Shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a conditional use permit or a temporary use permit is required."

The use is a principal use permitted in the district subject to special conditions.

Factor 3: (Section 38-504(3) a.3.) "Is one that is unique and not shared with other property owners."

This condition is applied across the community and is not unique to this property.

Factor 4: (Section 38-504(3) a.4.) "Will relate only to property that is under control of the applicant."

The variance will only relate to the property under the control of the applicant.

Factor 5: (Section 38-504(3) a.5.) "Is applicable whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome."

The strict letter of the law will not prevent the owner of the property from reasonably using the property, and it would not be unnecessarily burdensome to comply.

Factor 6: Section 38-504(3) a.6.) “Was not created by action of the applicant (i.e., that it was not self-created.)

The need for the variance is self-created. The applicant states that the landscaping next to the building will be difficult to maintain, especially during winter months when salt is applied to the sidewalk next to the building.

Factor 7: Section 38-504(3) a.7.) “Will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion of public streets or increase the danger of fire or endanger the public safety.”

The variance would not impair the supply of light or air to adjacent properties, create unreasonable congestion, increase fire danger or endanger the public.

Factor 8: Section 38-504(3) a.8.) “Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.”

The variance would not impact property values in the immediate vicinity.

Factor 9: Section 38-504(3) a.9.) “Is applicable whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the area, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.”

Applying a lesser variance would possibly provide justice to the property owner; however other properties in the area appear to not have landscaping abutting their walls either.

Special Conditions. When all of the foregoing basic conditions can be satisfied, a variance may be granted when any one (1) of the following special conditions can be clearly demonstrated:

1. “Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this chapter. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.”

There appear to be no practical difficulties or undue hardships preventing the strict letter of this chapter.

2. “Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district.”

There appear to be no exceptional or extraordinary circumstances or physical conditions with this property that do not generally apply to other properties in the same district.

3. “Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.”

A variation would be necessary for the preservation of a substantial property right possessed by others in the same district.

The request for a variance is approved to allow the use of decorative stamped and colored concrete in place of abutting landscaping for the following reasons:

1. The variance would not be contrary to the intent of the ordinance;
2. The variance would provide justice shared by other properties in the area;
3. A variation is necessary for the preservation of a substantial property right possessed by others in the same district.

The variance was approved based on all aspects of the plans and descriptions submitted. The structure, use or activity shall be constructed or carried on in accordance with the plans and/or description provided by the Applicant. All aspects of construction shall be in compliance with the plan submitted, regardless of whether a variance was sought or necessary for certain dimensional or other aspects of the plan.

Any variance granted by the Zoning Board of Appeals shall not be valid after a period of six (6) months from the date granted unless the owner shall have taken substantial steps, as determined by the Board, in implementing the variance granted by the Board.” Sec. 38 504(c) 2. i. ii., Chapter 38, of the City of Owosso Zoning Ordinance.

The above findings, conclusions and decision were adopted by a 3 to 1 roll call vote as follows:

AYES: BOARD MEMBERS BRUFF, GRUBB AND CHAIRMAN HORTON

NAYS: BOARD MEMBER TAYLOR

VARIANCE REQUEST #1:

SECTION 38-397 COMMERCIAL DESIGN REQUIREMENTS PARAGRAPH (A) (3) WINDOW AREA OR SPANDREL GLASS SHALL MAKE UP AT LEAST TWENTY PERCENT (20%) OR MORE OF THE EXTERIOR WALL AREA FACING A PRINCIPAL STREET(S).

THE PROPOSED BUILDING MEETS THIS REQUIREMENT ON THE SOUTH ELEVATION FACING MAIN STREET. THE APPLICANT IS SEEKING A VARIANCE FOR THE EAST BUILDING ELEVATION FACING GOULD STREET AND PROPOSING APPROXIMATELY 9% GLASS AREA.

FINDINGS OF FACT AND CONCLUSIONS

Upon motion of Board Member Taylor, seconded by Board Member Bruff, the following findings, conclusions, decisions, and conditions were adopted by the Board as its decision on the above variance. The applicant **does not** meet the applicable nine (9) facts of findings:

a. Basic Conditions 1-9 in order for the variance to be granted.

Factor 1: (Section 38-504(3) a.1.) “Will not be contrary to the public interest or to the intent and purpose of this chapter.”

The intent of this chapter is to ensure the use of high-quality materials, provide an open and inviting look for customers and to improve overall safety by having more transparency into the store along with more eyes on the street. While the reduction is only 11%, we feel that the building is small enough that this would be a significant change from the ordinance.

Factor 2: (Section 38-504(3) a.2.) “Shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a conditional use permit or a temporary use permit is required.”

The use is a principal use permitted in the district subject to special conditions.

Factor 3: (Section 38-504(3) a.3.) “Is one that is unique and not shared with other property owners.”

This condition is applied across the community and is not unique to this property.

Factor 4: (Section 38-504(3) a.4.) “Will relate only to property that is under control of the applicant.”

The variance will only relate to the property under the control of the applicant.

Factor 5: (Section 38-504(3) a.5.) “Is applicable whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.”

The strict letter of the law will not prevent the owner of the property from reasonably using the property, and it would not be unnecessarily burdensome to comply.

Factor 6: Section 38-504(3) a.6.) “Was not created by action of the applicant (i.e., that it was not self-created.)

The need for the variance is not self-created. If the applicant property were not situated on a corner lot, the applicant lot, the applicant would comply with the ordinance.

Factor 7: Section 38-504(3) a.7.) “Will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion of public streets or increase the danger of fire or endanger the public safety.”

The variance would not impair the supply of light or air to adjacent properties, create unreasonable congestion, increase fire danger or endanger the public.

Factor 8: Section 38-504(3) a.8.) “Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.”

The variance would not impact property values in the immediate vicinity.

Factor 9: Section 38-504(3) a.9.) “Is applicable whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the area, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.”

Applying a lesser variance would possibly provide justice to the property owner; however other properties in the area seem to have met the glass requirement while also situated on a corner lot.

Special Conditions. When all of the foregoing basic conditions can be satisfied, a variance may be granted when any one (1) of the following special conditions can be clearly demonstrated:

1. “Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this chapter. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.”

The only potential practical difficulty is the fact that this lot is a corner lot requiring two front façades to be applied. As noted above, other similarly situated properties on corner lots seem to meet the 20% glass requirement

2. "Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district."

There appear to be no exceptional or extraordinary circumstances or physical conditions with this property that do not generally apply to other properties in the same district.

3. "Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district."

A variation would be necessary for the preservation of a substantial property right possessed by others in the same district.

The variance is denied to allow for a reduction of required glass façade from 20% to 9%, for the following reasons:

1. A reduction would be contrary to the intent of the ordinance;
2. The condition is not unique to the property;
3. The strict letter of the law will not prevent the owner of the property from reasonably using the property, and it would not be unnecessarily burdensome to comply;
4. The variance would not provide justice shared by other properties in the area;
5. There appear to be no exceptional or extraordinary circumstances or physical conditions with this property that do not generally apply to other properties in the same district; and
6. A variation is not necessary for the preservation of a substantial property right possessed by others in the same district.

The motion failed by a 3 to 1 roll call vote as follows:

AYES: BOARD MEMBER TAYLOR

NAYS: BOARD MEMBERS BRUFF, GRUBB AND CHAIRMAN HORTON

Upon motion of Board Member Bruff, seconded by Board Member Grubb, to table Variance Request #1 until the June meeting if necessary. If J & H Family Store is able to meet the 20% requirement by installing spandrel or opaque windows on the warehouse, this variance request would not be required.

The motion passed by a 3 to 1 roll call vote as follows:

AYES: BOARD MEMBERS BRUFF, GRUBB AND CHAIRMAN HORTON

NAYS: BOARD MEMBER TAYLOR

OTHER BOARD BUSINESS: None

PUBLIC COMMENTS AND COMMUNICATIONS: None

ADJOURNMENT:

MOTION BY BOARD MEMBER BRUFF AND SUPPORTED BY BOARD MEMBER TAYLOR TO ADJOURN AT 10:40 A.M. UNTIL THE NEXT REGULARLY SCHEDULED MEETING ON TUESDAY, JUNE 18, 2019, IF ANY REQUESTS ARE RECEIVED.

YEAS: ALL. MOTION CARRIED.

Approved minutes 05-21-2019

Matthew Grubb, Secretary